

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

<p>CASCADE BICYCLE CLUB and KING COUNTY,</p> <p style="padding-left: 40px;">Petitioners,</p> <p style="padding-left: 40px;">v.</p> <p>CITY OF LAKE FOREST PARK,</p> <p style="padding-left: 40px;">Respondent.</p> <hr style="width:40%; margin-left:0"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CPSGMHB Case No. 07-3-0010c</p> <p><i>(Cascade Bicycle)</i></p> <p>FINAL DECISION AND ORDER</p>
---	--	--

SYNOPSIS

On January 3, 2007, and January 22, 2007, the Central Puget Sound Growth Management Hearings Board received Petitions for Review from the Cascade Bicycle Club and King County, respectively. The Petitions challenged Ordinance 951 which adopted specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use as an amendment to the Lake Forest Park Comprehensive Plan.

The Petitioners' challenge alleges that several portions of the Growth Management Act had been violated. Included in their complaint are RCW 36.70A.020, 36.70A.120, 36.70A.130, and 36.70A.200, all related to comprehensive plan planning activities, planning goals, plan amendments and siting of essential public facilities. In addition, Petitioners' challenges allege the City failed to comply with RCW 36.70A.106 (notification to CTED), and the State Environmental Policy Act related to complying with notification and procedural requirements.

The Board found that the Petitioners did carry their burden of proof to demonstrate that the City was clearly erroneous in its adoption of Ordinance 951, and issued an Order of Invalidity and remanded to the City for legislative action.

I. PROCEDURAL BACKGROUND¹

A. General

On January 3, 2007, the Central Puget Sound Growth Management Hearings Board (the Board) received a Petition for Review (PFR) from Cascade Bicycle Club (Cascade Bicycle). The matter was assigned CPSGMHB Case No. 07-3-0001. Cascade Bicycle challenges the City of Lake Forest Park's (Respondent, Lake Forest Park, or the City) adoption of Ordinance No. 951, citing noncompliance with various sections of the Growth Management Act (GMA or Act) and the State Environmental Policy Act (SEPA).

¹ A complete chronology of procedures in this case is attached as Appendix A.
07310c Cascade Bicycle FDO (July 23, 2007)
07-3-0010c Final Decision and Order
Page 1 of 34

On January 22, 2007, the Board received a PFR from King County (King County or County). The matter was assigned Case No. 07-3-0010. King County also challenges Lake Forest Park's Ordinance 951 and SEPA.

On January 26, 2007, the Board issued a Notice of Hearing (NOH) and Intent to Consolidate (ITC). No objections were received and the consolidated case was assigned to David O. Earling, as Presiding Officer, as Cascade Bicycle, et al v. Lake Forest Park, CPSGMHB Case No. 07-3-0010c.

On February 1, 2007, the board conducts its Prehearing Conference (PHC) and subsequently issued its Prehearing Order (PHO) which articulated the legal issues for review and the final schedule for the proceedings.

Lake Forest Park filed its Index of the Record on February 8, 2007.

B. Motion to Supplement the Record and Amend the Index

Several Motions to Supplement were made by the parties. A complete listing of those Motions can be found in Appendix A of the Final Decision and Order (FDO).

C. Dispositive Motions

Several Dispositive Motions were made by the parties. A complete listing of those motions can be found in Appendix A of the FDO.

D. Briefings

All Prehearing briefs were received in a timely manner. The following references are used throughout this Final Decision and Order:

- Petitioner Cascade Bicycle's Prehearing Brief – **Cascade PHB**
- Petitioner King County's Prehearing Brief – **County PHB**
- Respondent City of Lake Forest Park's Prehearing Response Brief – **City's Response**
- Petitioner Cascade Bicycle's Reply Brief – **Cascade Reply**
- Petitioner King County's Reply Brief – **County Reply**

E. Preliminary Matters

Included within all of the parties' briefings were documents not previously included in the Record nor authorized by the Board's Order on Motions. The following were accepted under Official Notice:

- HOM Exhibit 1: LFP Comprehensive Plan
- HOM Exhibit 2: KC Comprehensive Plan
- HOM Exhibit 3: LFP 18.54 (Pre-Ordinance 951)
- HOM Exhibit 4: LFP 18.54 (Post-Ordinance 951)
- HOM Exhibit 5: FHWA MUTCD
- HOM Exhibit 6: WSDOT Design Manual
- HOM Exhibit 7: Ordinance 958

On June 1, 2007, the Board held a hearing on the merits (**HOM**) at the Board's office at 800 Fifth Avenue, Suite 2356, Seattle, Washington. Board members David Earling, Presiding Officer, Edward McGuire, and Margaret Pageler were present. The Board's Law Clerk, Julie Taylor, was also present for the Board. Petitioner Cascade Bicycle was represented by Jeffrey Eustis. Petitioner King County was represented by Andrew Marcuse. Respondent City of Lake Forest Park was represented by Michael Ruark. Court reporting services were provided by Barbara Hayden of Byers and Anderson, Inc. The following persons also attended the HOM to observe: David Hiller, Chuck Ayers, David Hutchison, David Cline, Steve Bennett, Ed Sterner, Kevin Brown, Tom Koney, Amy Daubert, and Bill Moritz.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, STANDARD OF REVIEW, AND DEFERENCE TO LOCAL JURISDICTIONS

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the Legislature directed the Boards to hear and determine whether the challenged actions are in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The legislature directed that the Boards "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1). As articulated most recently by the Supreme Court, "the Board is empowered to determine whether [a jurisdiction's] decisions comply with GMA requirements, to remand noncompliant ordinances to [jurisdictions], and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance." *Lewis County v. Western Washington Growth Management Hearings Board (Lewis County)*, 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).

Legislative enactments adopted by the City of Lake Forest Park pursuant to the Act are presumed valid upon adoption. RCW 36.70A.320(1). The burden is on the Petitioners to demonstrate that the actions taken by the City of Lake Forest Park are not in compliance with the Act. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the actions taken by [the jurisdiction] are clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find the action of the City of Lake Forest Park clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to the City of Lake Forest Park in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. The Supreme Court has stated: "We hold that deference to [a jurisdiction's] planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is

shown that a [jurisdiction's] planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005). In *Lewis County*, the Court reaffirmed and clarified its holding in *Quadrant*, stating that: "... the GMA says that Board deference to [local government] decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds." 157 Wn. 2d at 506, fn. 16.²

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to only those issues presented in a timely petition for review. RCW 36.70A.290(1).

III. BOARD JURISDICTION, PRELIMINARY MATTER, AND PREFATORY NOTE

A. Board Jurisdiction

The Board finds that both Petitioners' PFRs were timely filed, pursuant to RCW 36.70A.290(2); that Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and that the Board has subject matter jurisdiction over the challenged Ordinance, which amends the City of Lake Forest Park's development regulations, pursuant to RCW 36.70A.280(1)(a) and RCW 36.70A.070(6)(a)(iv)(B) and (6)(c).

B. Prefatory Note

This matter involves a challenge to the City of Lake Forest Park's Ordinance No. 951, which amends its conditional use permit regulations as they relate to multi-use or multi-purpose trails. Petitioners posed nine Legal Issues in asserting that this Ordinance is noncompliant with various provisions of the GMA. One of the threshold questions in this case is whether the Burke-Gilman Trail is an essential public facility. An affirmative answer to this question is needed to proceed to answering all but one of the Legal Issues presented. The Legal Issue that is not related to the Burke-Gilman Trail is Legal Issue No. 2, which questions whether the City has any process for siting essential public facilities. Thus the Board will address this question first. Then the Board turns to the nub of this case – combined Legal Issues 1 and 4 – which contains the bulk of the Board's discussion and which was the Legal Issue most heavily briefed and argued at the hearing on the merits. Following discussion of Legal Issues 1 and 4 the Board has grouped four Legal Issues pertaining to compliance with the Goals of the Act – Legal Issues 3, 5 and 6. The Board then moves to Legal Issue 8 and 9, combined discussion, and finally, Legal Issues 7 and 10, also discussed together.

² The *Lewis County* majority is in accord with prior rulings that "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). See also, *Cooper Point Association v. Thurston County*, 108 Wash. App. 429, 444, 31 P.3d 28 (2001) ("notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent' with the requirements and goals of the GMA"); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3d 1156 (2002).

IV. THE CHALLENGED ACTION

Ordinance No. 951 is entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK; RELATING TO THE CITY'S CONDITIONAL USE ORDINANCE; *AMENDING SECTION 18.54.047 OF THE LAKE FOREST PARK MUNICIPAL CODE PROVIDING SPECIFIC DEVELOPMENT CRITERIA UNDER WHICH A MULTI-USE OR MULTI-PURPOSE TRAIL MAY BE AUTHORIZED BY CONDITIONAL USE.*

(Emphasis supplied).

All of the amendments to Lake Forest Park Municipal Code (**LFPMC**) 18.54.047, are contained in Section 1 of the Ordinance which has four subsections A-D.

Section A of the Ordinance sets forth general findings and includes “principles *not as sources of additional authority for regulation*, but as guidance for the City’s Hearing Examiner,” when considering applications pursuant to the new criteria. Ordinance No. 951, at 1-2, (emphasis supplied).

Section B defines “Multi-use trail” and “multi-purpose trail” as

[A] paved recreation path for non-motorized users that connects with or continues with such paths in other cities, including but not limited to paths designed for use by: bicyclists, in-line skaters, roller skaters, wheelchair users (both non-motorized and motorized) and pedestrians, including walkers, runners, people with baby strollers, and people walking dogs.

Ord. 951, at 2.

Section C sets forth direction to the Examiner for reviewing conditional use permit³ proposals for a multi-use/purpose trail. It provides as follows [**new** amendatory language is underlined]:

A multi-use or multi-purpose trail facility may be allowed, added or altered as a conditional use in any land use zone of the City. In granting such conditional use, the hearing examiner is instructed to attach appropriate conditions such as, but not limited to, the following, limitation of size, location on property and screening and to only issue conditional use permits conditioned with any requirements provided under Chapter 18.54, unless otherwise provided herein.

³ LFPMC 18.54.030 sets forth the general conditional use permit criteria that are typically found in most jurisdictions codes governing conditional use permits, such as: compatibility with the plan, not materially detrimental to the neighborhood, provides needed community service, compatible with the character of existing neighborhood, compatible with physical attributes of the site, not in conflict with public health and safety of the community, no adverse impact on public services, satisfactory applicant past performance. LFPMC 18.54.030, Appendix B Cascade PHB.

07310c Cascade Bicycle FDO (July 23, 2007)

07-3-0010c Final Decision and Order

Page 5 of 34

Id.

Section D lists the specific development criteria newly adopted by Ordinance No. 951, as follows:

D. Any conditional permit for a multi-use or multi-purpose trail

1. *Shall require* for trail crossings with driveways and minor roadways:
 - a. Providing access to less than 50 homes a *yield sign for the trail users, maintaining right-of-way to motor vehicular traffic* with advance warning signs on the trail and road (unless there are known conflicts that require a stop sign for the trail and/or additional traffic control measures); or
 - b. Providing access to 50 or more homes a *stop sign for trail users, maintaining right-of-way to motor vehicular traffic* with advance warning signs on the trail and road (unless there are known conflicts that require additional traffic control measures for the trail).
 - c. . . [calculation of number of homes accessed at the crossing].
2. *Shall*, with respect to trail crossings at signalized or stop sign controlled intersections, *align the trail* to enter into the controlled intersection (e.g. via a marked cross walk) and abide by vehicular trip control measures, unless the hearing examiner finds that such alignment is not practicable.
3. *Shall specify maximum posted speeds* not to exceed 15 MPH, provided that in order to promote safety and use of the trail by multiple users, a lower speed limit (e.g. 10 MPH) *shall* be posted in areas where there is user congestion, accident history, limited sightlines or other conditions that merit a lower speed limit. [procedures for determining congestion, based upon reported accidents].
4. *Shall* [require the applicant to provide]
 - *a site plan* [location of buildings, signs, parking, ingress/egress, landscaping lighting etc.];
 - *a traffic control plan* [description of intersection control for trail user safety, traffic signage etc];
 - *a trail development plan* [compatibility with character and appearance of neighborhood, preserves privacy through setbacks, landscaping, fencing, trail design speeds, sight distances, surface, width, speed controls, access limiting bollards, design of shoulders, 12 foot setbacks in residential areas, landscaping cannot impact sight triangles, trail lighting];

- *a trail use plan*, [to accommodate different types of uses by speed, trail surface, trail width area, trail condition signage, etc.];and
- *a trail maintenance plan* [party responsible for maintenance, landscaping, signage, lighting, etc.]

Id. at 2-5, (emphasis supplied).

V. LEGAL ISSUES

A. LEGAL ISSUE 2 – Process for Siting an Essential Public Facility

The PHO states Legal Issue 2 as follows:

Legal Issue No. 2 (Cascade Bike Issue C)(as modified in the Order on Motions)

Did the City violate RCW 36.70A.200(1) by failing to adopt a process for identifying and siting essential public facilities, a process that was required at the time of adoption of the City’s Comprehensive Plan?

Applicable Law

RCW 36.70A.200 is entitled “Siting of essential public facilities” and provides in relevant part:

(1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities.

Discussion

This issue is a spin-off of the Board’s March 19, 2007 Order on Motions. The surviving question here, as discussed in the 3/19/07 Order, is whether the City failed to adopt a process for identifying and siting essential public facilities (**EPFs**) by the time it adopted its Comprehensive Plan.

The essence of Cascade Bicycle Club’s argument here is simply that the City of Lake Forest Park does not include a process for identifying and siting EPFs. Cascade PHB, at 24. Petitioner notes that the Lake Forest Park Comprehensive Plan has a policy – Policy CF 4.2⁴ - that *suggests* the establishment of a process, but as Cascade asserts, no such process has been developed. *Id.* To support this contention, Cascade provides Supplemental Exhibit 8 – a letter response from the City Clerk regarding a request for the EPF siting process. The Clerk’s December 13, 2006 response was, “City Records show that a process has not been established for reviewing proposals for siting essential public facilities.” Cascade PHB, at 25, *citing* Supp. Ex. 8. The Board notes that this is persuasive evidence.

⁴ CF 4.2 states in part: “Establish a process for reviewing proposals for siting essential public facilities, including federal, state, regional or local proposals. The process should include requirements for the siting of proposed public facilities . . .” (Emphasis supplied). Appendix A to Cascade PHB.

In response, the City argues that its Plan has a Capital Facilities Element which addresses essential public facilities. City Response, at 49, *citing* Appendix A, the Plan Executive Summary, at v-vi. The City also argues that there are provisions for siting EPFs in the King County County-wide Planning Policies. *Id.* The City then cites to numerous Plan Policies as evidence of its EPF identification and siting process. *Id.* at 50-51. The Board notes that many of the policies cited relate to “capital facilities” and seem to speak to the City’s general process for identifying and siting its capital facilities. Those that speak directly to EPFs, in particular CR 4.2, speak to “establishing a process” as Petitioners argued. Finally, the City argues that CF 4.2 was adopted in December of 2005, by Ordinance No. 932, as part of the City’s GMA Plan Update and Petitioners did not challenge it at that time and are now time barred from challenging it here. *Id.* at 51-52.

While the Board agrees with Petitioner Cascade that the City’s “process for identifying and siting EPFs” is somewhat illusory and yet to be established, the Board nonetheless is compelled to agree with the City as to timeliness. The City’s EPF process, including CF 4.2, was put into place in December 2005, by Ordinance No. 932. It was an amendment to the Comprehensive Plan, and part of the statutorily required Plan Update. Following adoption of Ordinance 932 was the time to raise this challenge, not here as the City adopts an Ordinance amending its development regulations. There is nothing in Ordinance No. 951 which alters, modifies or amends any aspect of the City’s Plan; this challenge at this time is misplaced. Further, the Board has consistently held that “failure to act” challenges are tied to a jurisdiction’s missing a statutorily imposed deadline – a “failure to act.” *See e.g. Futurewise v. Snohomish County*, CPSGMHB Case No. 05-3-0020, Order on Motions to Dismiss, (May 23, 2005). The Board notes that it would be prudent for the City to expeditiously develop its process for identifying and siting essential public facilities more thoroughly before the next required review period. The Board finds and concludes that Petitioner Cascade’s challenge, as posed in Legal Issue 2, is untimely and is dismissed with prejudice.

Conclusion

Petitioner’s Legal Issue 2, asserting the City of Lake Forest Park’s noncompliance with the *inclusion of process for identifying and siting essential public facilities in its Plan*, RCW 36.70A.200(1), is **untimely** and is **dismissed with prejudice**.

B. LEGAL ISSUES 1 and 4 – Preclusion of Essential Public Facilities and Goal 7 [Permits]

The PHO states Legal Issues 1 and 4 as follows:

Legal Issue No. 1 (*Cascade Bike Issue A; King County Issue 1*)

Does Ordinance 951, amending the City’s Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.200(5) which forbids local jurisdictions from precluding the siting of essential public facilities, by:

(a) precluding the siting of regional trails, such as the Burke-Gilman Trail;

- (b) *making it impracticable, if not impossible, to site or improve such trails; or*
- (c) *both (a) and (b)?*

Legal Issue No. 4 (Cascade Bike Issue A; King County Issue 2)

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.020(7), the GMA's permit processing goal, because it:

- (a) fails to provide multi-use trail proponents with a fair and predictable permit processing system;*
- (b) creates conflict between the City's regulations and the regulations or state, federal, and/or other regulatory entities; or*
- (c) does both (a) and (b)?*

Applicable Law

RCW 36.70A.200(1), partially cited *supra*, provides in full:

- (1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. *Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140,⁵ state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.*

- (5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

CTED's explanatory guidelines are contained in WAC 365-195-340, which provides:

- (1)(a): Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities, state and local correctional facilities, state or

⁵ RCW 47.06.140: The interstate highway system, interregional state principal arterials including ferry connections that serve statewide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are related solely to marine activities affecting international and interstate trade, and high-capacity transportation systems serving regions as defined in RCW 81.104.015.

regional transportation facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.

(1)(a)(i): Identifying facilities. In the identification of essential public facilities, the *broadest view should be taken of what constitutes a public facility*, involving the full range of services to the public provided by government, substantially funded by government, contracted for by government, or provided by private entities subject to public service obligations.

RCW 36.70A.020(7) sets forth the GMA planning goal for Permits:

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

Discussion

Prefatory Note:

Legal Issue No. 1 boils down to two fundamental questions. The first is a threshold question that determines whether the second is relevant.

The threshold question:

1. Is the Burke-Gilman Trail an Essential Public Facility (**EPF**)?

If the Burke-Gilman Trail is an EPF, the remaining relevant question is:

2. Is the City, through its Conditional Use Permit (**CUP**) Process, precluding the siting, expansion, or improvement of an EPF?

Is the Burke-Gilman Trail an Essential Public Facility?

In order to prevail in a challenge under 36.70A.200, the Petitioners first must demonstrate that the Burke-Gilman Trail is an *Essential Public Facility*. Both Cascade and King County take a similar approach in their justification that the Burke-Gilman Trail is an EPF. Lake Forest Park argues on the other hand that Burke-Gilman is not an essential public facility.

Positions of the Parties:

Petitioners King County and Cascade Bicycle Club argue that the Burke-Gilman Trail is a regional EPF. Both contend it serves as an important regional transportation corridor, as well as a significant link for regional recreation. County PHB, pg. 7.

Petitioners point to RCW 36.70A.200(1) and argue that essential public facilities include those facilities which are *difficult to site* and while multi-use trails are not identified specifically in the

legislation, the Burke-Gilman Trail qualifies, as the examples given are only examples of essential public facilities. County PHB, pg. 6.

In addition, the Petitioners cite WAC 365-195-340(a)(1) which says, when identifying facilities, “the broadest view should be taken of what constitutes a public facility, involving the full range of services to the public provided by government, substantially funded by government, contracted for by government, or provided by private entities subject to public service obligations.”

Cascade Bicycle points to the King County Comprehensive Plan F-222 which sets forth four criteria for identifying EPF’s: (a) if the facility meets the GMA definition of an EPF, (b) is on a state, county or local community list of EPF’s, (c) serves a significant portion of the County or metro region or is part of a county-wide service system, and (d) is the sole existing facility in the county providing that essential public service. Cascade Bicycle PHB, pg. 13.

Both Petitioners emphasize the listing of the Burke-Gilman Trail in several important plans related to trails and transportation. Examples include the King County Transportation Plan, the designation of the trail as a core element of the Metro Transportation System, and the listing of the Burke-Gilman Trail as a regional trail by King County and the Puget Sound Regional Council. The reference to the Burke-Gilman Trail within these plans highlights the acknowledgment by the region of its importance as an essential public facility. Cascade PHB, pg. 13; County PHB, pgs. 6-7.

The Respondent, Lake Forest Park, argues that the Burke-Gilman Trail is not an essential public facility. The City argues that multi-use trails are not specifically listed in the GMA’s definition of EPFs, and that multi-use trails are significantly different than the facilities listed in 36.70A.200(1). It contends that for the trail to be essential, it must be indispensable, and that there exist parallel alternate facilities such as Bothell Way that serve the same transportation function as the Burke-Gilman Trail. City’s Response, pg. 13.

In addition, the City argues that the Burke-Gilman Trail is just a park and recreational facility, not an essential public facility. The City concedes that the trail is a public facility; but asserts that it is not essential, since it is “not indispensably necessary to a function of life.” City Response, at 13. The City contends that King County Parks operates the trail, not the King County Department of Transportation, and therefore it is a recreational facility. In addition, the City argues that an original trail in the 1960’s was acquired to provide “walking paths and trails for recreational purposes.” The City also points to the Lake Forest Park Comprehensive Plan, which lists the Trail as a recreation facility. City’s Response, pgs. 14-15.

Contrary to the Cascade Bicycle Club’s position, Lake Forest Park contends the Burke-Gilman Trail does not meet the criteria for the King County Comprehensive Plan Policy F-222, as it is not listed as an EPF, that there is no evidence that the trail is part of a county-wide service system, and that the trail is not the sole facility providing service in the County. City’s Response, pg. 16.

In reply, Cascade asserts that the City is parsing a term of art by arguing about what is “essential” and ignores the direction provided in RCW 36.70A.200(1) defining EPFs as those that are typically difficult to site – a criterion applicable to the Burke-Gilman Trail. Cascade Reply, at 5-6. Cascade also notes that the State Department of Transportation list of transportation facilities of statewide significance is not an exclusive list and that this trail does not serve the same function as city streets or other county trails. *Id.* at 7.

The County counters the City’s assertions that since the Trail is housed in the County Parks Department it is recreational, not a transportation facility, by arguing that the City is “falsely and unnecessarily cleav[ing] the two functions apart,” noting that the County Transportation Department prints and updates the trail maps. County Reply, at 7. The County notes that the GMA itself requires the transportation element to include a pedestrian and bicycle component – both recreational activities and both transportation alternatives – and that the City misses the point that .200(1) focuses on facilities that are typically difficult to site. *Id.* at 11.

Board Discussion:

Petitioners have demonstrated and convinced the Board that the Burke-Gilman Trail is an important regional transportation *and* recreational facility, serving residents from cities stretching from Seattle to Bothell, and continuing to the Sammamish River Trail, connecting to Kenmore, Woodinville and Redmond. Surveys indicate that the trail is more than a recreation facility, in that it is also an important non-motorized transportation facility for commuters – bicycle commuters in particular.

The City correctly points out that RCW 36.70A.200 does not expressly identify any type of recreation facility as an EPF, and does appear to limit transportation facilities to those listed in 47.06.140 which speaks to major transportation that serves the economic needs of the state or high-level commuter transportation. However, as the Petitioners point out, the use of the word “include,” as it is used in RCW 36.70A.200(1), denotes a “non-exclusive listing.” The listing of examples in .200(1) is not exclusive.

Additionally, the Board agrees that the major component of identifying an essential public facility is whether it is “typically difficult to site.” Both the above RCW and WAC denote that EPFs are those facilities that are difficult to site. WAC 365-340(1)(a)(i) indicates a broad view should be used in identifying EPFs so as to encompass a full range of governmental services.

As the Petitioners point out, by virtue of having the Burke-Gilman identified in several regional plans, the region has identified the trail as a regional recreation and transportation facility. Even the City of Lake Forest Park acknowledges the trail’s importance in Lake Forest Park Municipal Code 18.54.047B, defining “multi-use/multi-purpose trail” to mean “a paved recreational path for non-motorized users that connects with or continues with such paths to other cities.”

Approximately two (2) miles of the Burke-Gilman Trail pass through the City of Lake Forest Park. With the projected growth pattern in North King County, South Snohomish County, and East King County, the need for providing a safe route for non-motorized transportation will continue to grow. To severely restrict or alter use of the Burke-Gilman Trail would be counter-

productive to the County, the region, and the City of Lake Forest Park. Also, experiences related to the Sammamish River Trail and the debate over the Burke-Gilman, both historically (since 1970s) and currently as shown by this case, demonstrate that these types of trails are typically difficult to site.

King County and Cascade Bicycle Club have carried their burden of proof and persuaded the Board that the Burke-Gilman Trail is an essential public facility because of (1) its regional nature, 2) its importance in serving the non-motorized safe transportation needs of the County, and (3) it is a facility difficult to site. **To answer the threshold question – The Burke-Gilman Trail is an essential regional public facility.**

Is the City, through the use of a CUP process, precluding the siting⁶ of an EPF?

It is undisputed that the City's conditional use permit process is part of its regulatory scheme – a development regulation enforced by the City to govern development activities. The provisions of Ordinance No. 951 in question here are set forth in Section II, *supra*.

The focus of this question is RCW 36.70A.200(5) which prohibits local government plans and development regulations from *precluding* essential public facilities. The Board has interpreted “preclude” to mean: render impossible or impracticable; “impracticable” has been interpreted to mean: not practicable, incapable of being performed or accomplished by the means employed or at command. *Port of Seattle v. City of Des Moines*, CPSGMHB Case No. 97-3-0014, Final Decision and Order (August 13, 1997), at 8.⁷

As a matter of necessity, determining whether a development regulation is preclusive brings in aspects of GMA Goal 7, relating to processing permits in a timely, fair manner to ensure predictability. Consequently, the Board's discussion intertwines these two GMA provisions.

King County, as owner and operator of the Burke-Gilman Trail, is preparing to upgrade and rehabilitate the portion of the Trail through Lake Forest Park. The current level of use of the Trail already exceeds current design standards.⁸ King County plans to widen the paving, improve the surface, and meet current signage, traffic control, and visibility standards. Cascade PHB, at 5, Exs. 492 and 532.

Position of the Parties:

Cascade argues that Ordinance No. 951 precludes the siting or redevelopment and improvement of the Burke-Gilman Trail because the Ordinance: 1) allows denial of permit application outright; 2) allows imposition of mitigation measures that would render improvement to the Trail impracticable; and 3) imposes conditions that conflict with standards adopted under state and federal law. Cascade PHB, at 15-23. The County joins Cascade in arguing that provisions of the

⁶ *Des Moines v. Puget Sound Regional Council*, 98 Wn. App. 23, 988 P.2d 27 (1999): The Court of Appeals held that “siting” included use or expansion of an EPF (airport).

⁷ See also, *Des Moines v. Puget Sound Regional Council*, 98 Wn. App. at 34.

⁸ The Burke-Gilman Trail directly links the University of Washington central campus in Seattle with the Bothell campus (70,000 students and staff). HOM Transcript, at 9.

07310c Cascade Bicycle FDO (July 23, 2007)

07-3-0010c Final Decision and Order

Page 13 of 34

Ordinance are preclusive since it makes it impracticable, if not impossible, to site or improve a multi-use, multi-purpose trail. King Co. PHB, at 10-19.

The City counters, that even if a multi-purpose trail is an EPF, the Ordinance is not preclusive because local jurisdictions do have authority to mitigate the impacts of an EPF, and this Ordinance allows for reasonable mitigation to protect the public health, safety and welfare of its citizens. Additionally, the City asserts that the language in LFPMC 18.54.47C was previously adopted by Ordinance 909, not Ordinance 951, and is not subject to Board review. City Response, at 16-28.

In reply, Cascade reiterates and emphasizes its prior arguments. Cascade Reply, at 8-16. The County, does likewise, providing thorough citations to prior Board cases on preclusion of EPFs. The County further asserts that the Board has authority to review LFPMC 18.54.47C, arguing that the language now applies to multi-purpose trails. County Reply, at 2-5 and 11-17.

Cascade contends the City's Hearing Examiner is allowed "unbounded discretion" by certain provisions such as imposing limitations of size, privacy of adjacent areas, and enhanced landscaping. Cascade PHB, pg. 27.

Petitioners argue the City has discretion to deny a CUP to the County and other proponents of multi-use trails and in light of such discretion, the Petitioners, or other trail proponents, would not have a way to judge in advance if the City will approve a trail EPF. In addition, the Petitioners contend the ordinance allows the City to unilaterally decide to realign the trail, reduce its width, and to impose additional screening and fencing requirements, or all of the above. County PHB, pg. 15.

The Petitioners contend the Ordinance creates direct conflict between the City's regulations and the regulations of state, federal and/or regulatory entities. The Petitioners contend the Ordinance requires a trail development plan for any multi-use trail which must include a yield sign or stop sign for trail users at crossings to residential neighborhoods. County PHB, pg. 17; Cascade Bicycle PHB, pg. 20. Petitioner King County argues that the Ordinance would thus be in conflict with the Federal Highway Administration's (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), which is the foundation for and the source of state, as well as federal, traffic signage requirements. The County also argues that federal funds for County Trails could be jeopardized if applied for due to the City's conflicting provisions. County PHB, pgs. 16-17.

The County argues the Ordinance's absolute signage requirements conflict with engineering best practices and the MUTCD, thereby violating the GMA's predictability and fairness goal and preclusion prohibitions, because the County or other proponents cannot sign the trail in a way that will satisfy the Ordinance, as well as all federal, state and local government requirements. County PHB, pgs. 16-17.

The Petitioners argue the Ordinance's setback, landscaping and fence requirements violate the GMA by allowing the City to dictate setbacks and landscaping and, if required, the fence must provide an effective visual barrier to the trail. In addition, the Ordinance does not allow for

“sight triangle required by state law, federal regulations and the American Association of State Highway and Transportation Officials (AASHTO).” County PHB, pg. 18.

The Respondent contends that the Ordinance provides the Hearing Examiner and applicant with various options for mitigating impacts, such as setbacks, enhanced landscaping or fencing, and does not make the permit process unpredictable. The City argues that the permit process in Ordinance 951 is as predictable for the Petitioners as it would be for any other citizen seeking a conditional use permit with all applicants subject to a hearing on the application, review of evidence submitted and the issuance of a decision based on the established criteria for review. City’s Response, pg. 32.

The City argues the County’s primary argument is that the Ordinance does not provide a “fair” permit process because it contains signage requirements that conflict with federal and state regulations regarding trail design. City’s Response, pg. 28. But the City asserts that the language in several federal and state regulations (City’s Response, pp. 33-36) is not as absolute as portrayed by the Petitioner. The City cites to federal grant regulations which require that “the project will be designed in ‘substantial’ conformity.” See City Response, page 33, at 13. The term “substantial conformity” is less severe than suggested by the petitioner. Another example comes in the AASHTO Guidelines which, according to the City, do not require absolute compliance with MUTCD. The City points to the Path-Roadway Intersections of the Guidelines which reads “The solutions provided in this chapter should be guidelines, not absolutes. Each intersection is unique and will require sound engineering judgment on the part of the designer as to the appropriate solution.” See City’s Response, ppg. 34 at 7. The City thus contends AASHTO does not prescribe adherence to any particular criteria, and recognizes that every intersection is unique and engineering judgment is required to determine appropriate solutions. City’s Response, pg. 34.

Board Discussion:

Context for Discussion: As a preliminary matter, the Board notes that the general conditional use permit criteria that apply to *all* CUPs, as found in LFPMC 18.54.030, are not before the Board since they were not altered by Ordinance No. 951. Further, the Board notes that the language of LFPMC 18.54.47C was not specifically modified by Ordinance 951. This provision provides:

A multi-use or multi-purpose trail facility may be allowed, added or altered as a conditional use in any land use zone of the City. In granting such conditional use, the hearing examiner is instructed to attach appropriate conditions such as, but not limited to, the following, limitation of size, location on property and screening and to only issue conditional use permits conditioned with any requirements provided under Chapter 18.54, unless otherwise provided herein.

(LFPMC 18.54.47C, underlining is new language.) The Board notes that this section of the City’s code suggests “in **granting** such [multi-use or multi-purpose trail siting or improvements] conditional uses. . .” conditions may be imposed. This is within the City’s authority. However, the focus of the present challenge, as the Board sees it, is LFPMC 18.54.47D – the special and

specific criteria that are binding on the hearing examiner. Thus, the Board's discussion is focused here.

To summarize, the **new** specific criteria that the examiner is to apply from LFPMC 18.54.047D are:

- Shall provide trail crossing signage for trail users (Yield Sign <50 homes; Stop Sign >50 homes)
- Shall align the trail at signalized/stop sign controlled intersections to enter via a marked cross walk and abide by vehicular traffic control measures, unless the examiner finds this is not practicable
- Shall post maximum speeds (10 – 15 mph depending on area)
- Provide a site plan showing location of buildings, signs, parking, ingress/egress, traffic-pedestrian improvements, landscaping, sensitive areas, lighting, etc
- Traffic Control Plan – description of intersection control for trail user safety, type and location of traffic control/signs for trail user, radar-activated speed indication devices (if designated), and law enforcement
- Trail Development Plan – compatibility with character and appearance of neighborhood, preserves privacy through use of setbacks, landscaping, fencing, etc., trail design speeds, sight distance, surface, width, speed controls, trail furniture (i.e. benches), access limiting bollards, design of non-paved areas and shoulders, within residential areas setback of 12 feet unless not practicable, landscaping shall not impact sight triangles, adequate trail lighting
- Trail Use Plan – accommodates different types of uses via speed, trail surface, trail width, area, rules/regulations, trail conditions signage
- Trail Maintenance Plan – party responsible for maintenance of trail, landscaping, signage, lighting, furniture, etc.

The Board has previously found the CUP process may be appropriate for a local jurisdiction's determination of reasonable conditions and mitigating measures for both state and regional EPFs, but has limited the use of the CUP process. (*See King County v. Snohomish County (King Co. I)*, CPSGMHB No. 03-3-0011, Final Decision and Order (Oct. 13, 2003), at 13, and *Sound Transit v. Tukwila (Tukwila)*, CPSGMHB No. 99-3-0003, Final Decision and Order (Sept. 15, 1999), at 6.

In *King County I*, a case pertaining to the Snohomish County's EPF regulations for wastewater treatment facilities, the Board reviewed the decisional criteria that was contained in the County's CUP process that was specific to EPFs.

In that case, the Board noted that the use of the CUP process was not *per se* prohibited, but that when a permit process reserves to a local government the discretion to deny something it cannot lawfully deny, a violation of RCW 36.70A.200 shall be found.⁹ The Board further noted that if

⁹ In *King County I*, at 13, the Board stated:

Snohomish County wished to continue using the CUP process, it must differentiate between state/regional EPFs and local EPFs, with more local discretion as to the latter.

In *Tukwila*, the Board upheld a zoning regulation that provided for mitigation of impacts, but stated, at 5:

Cities are not regional decision-making bodies under the GMA ... Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, **after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable.**

In addition, in *Tukwila*, the Board noted that policies that did not “obligate or authorize the City to deny necessary permits” for a regional EPF did not render it impracticable. *Id.*

Therefore, drawing from previous Board cases, if the City is utilizing a CUP process when reviewing regional EPFs, it must not:

1. Grant the discretion to deny a permit
2. Impose unreasonable conditions that render an EPF project impracticable

Does the City’s CUP comply with these factors?

Do the specific “mitigating” conditions of section D authorize the denial of CUP?

The Board notes that LFPMC 18.54.47C, cited *supra*, indicates that permits for a multi-use or multi-purpose trail “may be allowed, added or altered.” A CUP may be granted by the examiner subject to findings that the proposal conforms to the specific development criteria noted above. The City’s specific criteria are directive, the examiner “*shall require*” – see LFPMC 18.54.47D1, 2, 3 and 4. If these requirements are not met, it follows that the examiner cannot grant the CUP – so permit denial is implied. Perhaps more important here is the second question.

Do the specific “mitigating” conditions of Section D impose unreasonable conditions that render an EPF project impracticable?

As noted *supra*, the Board has interpreted “preclude” to mean: render impossible or impracticable; “impracticable” has been interpreted to mean: not practicable, incapable of being

“... no local ... permit processes and conditions, may preclude the siting, expansion or operation of an essential public facility. **Local plans and regulations** may not render EPFs impossible or impracticable to site, **expand or operate, either** by the outright exclusion **of such uses, or** by the imposition of process requirements or substantive conditions that render the EPF impracticable.

performed or accomplished by the means employed or at command. In the instant case, a multi-use trail is permitted, subject to approval of a CUP, which may impose conditions. Impracticability can result from the imposition of unreasonable conditions or requirements.

Here, the examiner is instructed to attach appropriate conditions such as size, location on property, screening, along with the specific conditions. The requirements which any multi-use trail CUP application must conform to are:

- Trail signage – directed at trail users
- Trail alignment with crosswalks at signalized/stop sign intersections
- Speed limit signage/devices
- Traffic Control Plan
- Trail Development Plan
- Trail Maintenance Plan

The Trail Development Plan allows the hearing examiner discretion in regard to trail width/setbacks, a concern of both Petitioners. The City has established a standard 12 foot setback from the shoulder of the trail in residential areas; however, the examiner may adjust this setback if it can not be met by trail re-alignment due to pre-existing structure, topographical, available right-of-way, environmental laws, etc. by reducing either trail or setback width, or both. If the setback is reduced, enhanced landscaping is required and fencing may be required.

Petitioners assert that the language of Ordinance 951 grants the hearing examiner “unbounded discretion” to condition or deny approval of a multi-use trail. And, that discretion is permitted by reference to “subjective” conditional use permit criteria. Petitioners argue that the permit review process is not governed by objective standards and an applicant has no way of knowing, in advance, if the application will satisfy the hearing examiner. According to the Petitioner, such discretion violates .020(7) and .200(5) because first, there is no way to judge in advance whether the City would approve a multi-use trail and second, because it allows the City to unilaterally decide to realign, reduce width, and impose screening/fencing requirements. The Board agrees the CUP process does leave the applicant wondering how much the project will cost or whether it can be approved at all because of these discretionary requirements. Further, the hearing examiner may – and in some cases is required to – impose conditions that alter the uniform width, alignment, and traffic flow of a multi-city transportation facility.

The Board, in *King County I*, has found subjective criteria to violate .020(7) in regard to EPFs. The Eastern Washington Growth Management Hearings Board similarly has found that regulations which rely on “unenforceable ad hoc standards” violate the GMA. The Western Washington Growth Management Hearings Board has also concluded that regulations which fail to provide sufficient standards violate the GMA. *Larson Beach Neighbors and Jeanne Wagenman v. Stevens County*, EWGMHB No. 00-1-0016, Order on Compliance (July 10, 2003); *Citizens of Mount Vernon v. City of Mount Vernon*, WWGMHB No. 98-2-0006, Final Decision and Order (July 23, 1998).

In addition to the Trail Development Plan, Petitioners argue that the signage requirement is in **conflict** with state and federal regulations/law – i.e. MUCTD, AASHOT, WSDOT Bike Designs

– thereby imposing a requirement that cannot be fulfilled. The City argues that all the cited state and federal regulations require is “substantial compliance” and each regulation allows for flexibility and the exercise of engineering judgment. However, even if AASHTO and MUTCD allow judgment calls on sign placement, the City’s ordinance does not allow for judgment to be exercised – the signage requirement is a mandate. In addition, right-of-way standards in the City’s code violate RCW 46.61.205 because, according to Cascade Bike, this RCW requires yielding to bikes.

Furthermore, Ordinance 951’s setback, landscape, and fence requirements are discretionary in nature and an applicant can not know in advance what requirements will be made. The Board is concerned the Hearing Examiner conditions may contradict the County’s Design Standards for a uniform multi-city trail. Requirements may also impact safety – such as sight triangles for fencing or landscaping – since the City requires that an “effective visual barrier to the trail” must be provided.

The Board finds that the conflicting standards between federal, state and city law lead to impracticability – one trail design cannot adhere to conflicting regulatory requirements created by the City – this situation yields preclusion and a violation of RCW 36.70A.200(5). Additionally, the reserved discretion potentially results in an unfair and unpredictable permitting process contrary to RCW 36.70A.020(7). Therefore, the Board finds and concludes that the City of Lake Forest Park’s adoption of Ordinance 951 fails to comply with RCW 36.70A.200(5) and was not guided by RCW 36.70A.020(7).

Conclusion

The Board finds and concludes that the City of Lake Forest Park’s adoption of Ordinance 951 **is clearly erroneous and fails to comply** with RCW 36.70A.200(5) and **was not guided** by RCW 36.70A.020(7).

B. LEGAL ISSUES 3, 5, AND 6 – GMA Goals 3, 9, and 12

The PHO states Legal Issue No. 3, 5 and 6 as follows:

Legal Issue No. 3 (*Cascade Bike Issue A; King County Issue 4*)

Does Ordinance 951, amending the City’s Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.020(3), the GMA’s Transportation goal, because it fails to encourage multimodal transportation which is based on regional priorities and coordinated with county and city comprehensive plans?

Legal Issue No. 5 (*Cascade Bike Issue A; King County Issue 3*)

Does Ordinance 951, amending the City’s Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.020(9), the GMA’s open space

and recreational goal, because it fails to enhance recreational opportunities and fails to provide for the development of parks and recreational facilities?

Legal Issue No. 6 (Cascade Bike Issue A)

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.020(12), the GMA's Public Facilities and Services goal, because it would render impracticable the improvement of the Burke-Gilman Trail, an essential public facility?

Applicable Law

RCW 36.70A.020(3), (9), and (12) set forth the following GMA planning goals:

- (2) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreational facilities.
- (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current levels of service below locally established minimum standards.

Discussion

Positions of the Parties

Goal 3

Petitioners contend that Ordinance 951 compromises the potential of the Burke-Gilman Trail, by not “encouraging multi-modal transportation based on regional priorities and coordinated with county and city comprehensive plans. Petitioners contend that the Burke-Gilman Trail is part of a multi-modal transportation system for several communities in King County and the region. Id. The Petitioners contend denying a CUP for a trail EPF is a means of prohibiting a multi-modal project. In addition, the Ordinance would effectively prevent Trail EPFs being sited and widened to accommodate trail users. County PHB, pg. 14.

The City's position is that Ordinance 951 provides for reasonable mitigation of the impacts of a multi-use trail and that requiring reasonable mitigation does not effectively prevent a trail from being sited or expanded. The goal to encourage efficient multi-modal transportation systems

does not prohibit local jurisdictions from requiring that impacts of such facilities be mitigated. City Response, pg. 19.

Goal 9

The Petitioners argue that Ordinance 951 fails to support the GMA's intention to "enhance recreational opportunities" and "develop parks and recreational facilities." The Petitioners contend that the CUP gives the City the discretion to deny improvements and further, that the City could prevent necessary improvements for current and future volume and needs. County PHB, pg. 19.

The City repeats its argument that Ordinance 951 provides for reasonable mitigation of the impacts of a trail. City Response, pgs. 37-38.

Goal 12

Petitioner Cascade Bicycle Club contends that Goal 12 is violated because the City's ordinance effectively obstructs improvement of the Burke-Gilman Trail. The Bicycle Club contends that current usage exceeds the Trail's ability to service capacity. Petitioner contends that by 2030, the County's projected population growth of 422,400 means that the Trail will be unable to provide service for the incrementally-increased use. Cascade PHB, pg. 29.

Respondent City of Lake Forest Park contends again that Ordinance 951 does not restrict further development of the Burke-Gilman Trail. The City is simply providing reasonable mitigation measures for trail improvements. City's Response, pg. 38. In addition, the City argues that the multi-use trail is not a public facility or service "necessary to support development" as indicated by Goal 12. They contend that there is no evidence that the streets and sidewalks in the City cannot accommodate non-motorized travel resulting from new development in the City. Id. pg. 38.

Board Discussion:

As for the balance of the GMA goals at issue, one could conclude that since Ordinance No. 951 precludes the expansion/improvement of an EPF which provides both regional transportation and recreational opportunities, it also thwarts the GMA goals which encourage multi-modal transportation, recreation, and public facilities and services.

Issue 3. Goal 3 encourages "efficient multimodal transportation systems" in the context of regional transportation priorities and coordination between city and county transportation plans. A required component of the transportation element of city and county plans is provision for non-motorized transportation:

(vii) pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors

RCW 36.70A.070(6)(vii). The City's comprehensive plan also recognizes the importance of non-motorized transportation corridors: "... recognizing the important recreational and transportation roles played by regional and local bicycle and pedestrian trail systems." Lake Forest Park Comprehensive Plan, RO-2.

Because the Board finds the Burke-Gilman Trail to be an essential public facility that serves as an important regional multi-modal facility, it finds the language of Ordinance No. 951 to be excessively restrictive in that it mandates and directs the Hearing Examiner to make decisions that thwart improvement of the Trail. The outcome could be an inter-city non-motorized transportation corridor interrupted, through the City of Lake Forest Park, by two miles of unimproved or inconsistently-designed railway. Ordinance No. 951 thus thwarts the goal of encouraging multi-modal transportation systems based on regional priorities.

Issue 5. Goal 9 calls for "enhanc[ing] recreational opportunities" and "develop[ing] parks and recreational facilities." A required element of a city or county's comprehensive plan is a park and recreation element that addresses "regional approaches for meeting park and recreational demand." RCW 36.70A.070(8). Lake Forest Park's comprehensive plan policies recognize the recreational value of a regional non-motorized multi-use trail. RO-2.

Because the Board finds the Burke-Gilman Trail to be an essential public facility that is an important regional recreational facility, it finds that Ordinance No. 951, by giving the City discretion to deny and/or prevent the necessary improvements to the Trail, fails to provide for the development of a regional recreation facility and thus was not guided by GMA Goal 9.

Issue 6. Goal 12 tells a city or county to look forward and ensure that public facilities and services are available when needed to serve anticipated growth, without decreasing current service levels below locally-adopted minimum standards. Here, the Petitioners have provided un-rebutted evidence of the current use of the Burke-Gilman Trail both for bicycle commuting and recreational purposes. They have documented that growth in King County will increase substantially by 2030, and that important recreation and transportation facilities will be impacted by that growth.

The Board finds that, in the face of the projected growth, Ordinance No. 951 gives the City the discretion to deny and/or prevent important improvements to the Trail. The City suggests that the multi-use trail is not necessary to support anticipated development, but that the current City sidewalks and streets can accommodate the additional growth. However, the City presents no data to rebut the Petitioners' well-documented assertions of current use and projected growth. The Board finds that Ordinance No. 951 was not guided by GMA Goal 12.

Conclusion

Petitioners have carried their burden of proving that Ordinance No. 951 thwarts GMA Planning Goals 3 (Transportation), Goal 9 (Open Space and Recreation), and Goal 12 (Public Facilities and Services). The Board finds and concludes that the enactment of Ordinance No. 951 was **clearly erroneous** and was **not guided by** RCW 36.70A.020(3), (9), and (12).

C. LEGAL ISSUE NOS. 8 and 9 – Consistency with Comprehensive Plan

The PHO states Legal Issue Nos. 8 and 9 as follows:

Legal Issue No. 8 (King County Issue 5)

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.130(1), requiring internal consistency, because it is not consistent with and fails to fully implement the City's Comprehensive Plan Goals including LU-7, CF-1, RO-1, and RO-2?

Legal Issue No. 9 (King County Issue 5)

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.130(1), requiring consistency with RCW 36.70A, because it contains generalized criteria that reserves broad discretion to the City to determine whether a proposal is 'adequate' or 'compatible'?

Applicable Law

RCW 36.70A.130(1), in relevant part, provides: (Emphasis added)

(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them ...

...
(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. *Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.*

With Ordinance 951, the City amended LFPMC 18.54.047 to include several new provisions providing for specific criteria that a conditional use for a multi-use/purpose trail must satisfy in addition to the more generalized criteria of the City's conditional use permit found in LFPMC 18.54.030. It is the specific criteria (i.e. required traffic controls, setbacks, trail design) in 18.54.047 that King County asserts are in conflict with the City's Comprehensive Plan.

Discussion

Position of the Parties:

Pertaining to Legal Issue 8, of the two Petitioners, only King County provides argument on this issue. King County asserts that RCW 36.70A.130(1)(d)'s use of the word "implement" requires that a development regulation must "fully carry out the goals, policies, standards and directions" of a jurisdiction's plan. County PHB at 21, *citing* to WAC 365-190-210, 365-195-800(1) (Emphasis in original). King County cites to four goals¹⁰ of the City's Comprehensive Plan – LU-7, CF-1, RO-1, and RO-2 - which the County asserts are not fully implemented by the amended Ordinance. *Id.*

King County argues that with the criteria adopted, the City, through either CUP denial or the imposition of conditions, would (1) allow for the continuance of inadequate capital facilities for regional trails that serve as non-motorized corridors (contrary to LU-7); (2) prevent the redevelopment of the trail so as to ensure necessary facilities are in place to support existing and future development (contrary to CF-1); and (3) fail to maintain a high standard for the development and maintenance of important recreational and transportation facilities (contrary to RO-1 and RO-2). *Id.* at 22-23.

In response, the City asserts that in determining whether a development regulation is consistent with a comprehensive plan, the plan should be viewed as an integrated whole with consistency equating to compatibility so as not to thwart or block a plan's provisions. City's Response at 38, citing *Citizens for Responsible Growth v. Snohomish County*, CPSGMHB Case No. 03-3-0013 (2003) at 14; *Pirie v. Lynnwood*, CPSGMHB Case No. 06-3-0029, Final Decision and Order (Apr. 9, 2007) at 43-44. In contrast to King County's assertions, the City argues that the specific criteria set forth in Ordinance 951 are simply conditions which the hearing examiner may impose to mitigate a facility's impacts. *Id.* at 40. According to the City, just because an ordinance

¹⁰ The particular provisions of these four goals taken to task in this legal issue are shown in italics. These four City goals state:

LU-7: Balance the need to provide for adequate housing with the desire to maintain the City's forested, residential character and unique natural sensitive areas. *Coordinate the concurrency of new development with the adequate provision of transportation facilities, utilities, capital facilities, parks and recreation facilities*, human services and encourage economic development.

CF-1: To ensure that those capital facilities and services necessary to support existing and future development shall be adequate to serve the development without decreasing current service levels below adopted level of service standards.

RO-1: *To maintain a high standard for the development and maintenance of the City's parks for both active and passive use.*

RO-2: *To coordinate with the Transportation Committee in promoting the establishment and maintenance of a safe, interconnected system of trails throughout the City, recognizing the important recreational and transportation roles played by regional and local bicycle and pedestrian trail systems.*

provides a mechanism for imposing reasonable conditions intended to mitigate impacts does not mean that it fails to carry out stated comprehensive plan goals. *Id.* at 40-41.

In reply, King County sets forth a variety of prior Board decisions which have found development regulations which effectively precluded EPFs to be non-compliant but asserts nothing further in regard to the Ordinance's consistency with the stated Comprehensive Plan Goals. King County Reply at 11-14.

As for Legal Issue 9, King County argues that Ordinance 951 lacks specific decision-making standards which would allow project proponents to know, in advance, whether a project does or does not qualify for approval. *Id.* at 23, citing *Citizens for Mt. Vernon v. Mt. Vernon*, WWGMHB Case No. 98-2-0006c, Final Decision and Order (1998) at 7. The County points to the use of words like "adequate" and "compatible" and the authorization for the hearing examiner to unilaterally impose conditions without regard to safety or other practical considerations. *Id.* at 23-24.

In response, the City asserts that the County fails to explain how the complained-of words are inconsistent with any City Comprehensive Plan provision. City's Response at 43. Nor does the County state how the ordinance fails to implement the City's Comprehensive Plan. *Id.* at 44. The City notes that the CUP process is an accepted method for permitting uses in an area which would have impacts on the surrounding community if not mitigated. *Id.* The City further notes that Ordinance 951 does not simply refer to "recommendations of the comprehensive plan" nor does it speak to "generalized considerations" which were fatal in the *Citizens of Mt. Vernon* matter. *Id.* According to the City, the ordinance contains detailed provisions which inform a project proponent of the requirements and permit a hearing examiner to appropriately mitigate the impacts of the proposal. *Id.*

In reply, King County sets forth a parallel argument to that presented for Legal Issue 8. King County Response at 11-17.

Board Discussion

In Legal Issue 1, the Board has found and concluded that the City's adoption of Ordinance No. 951 precludes the siting of an essential public facility - the Burke Gilman Trail - in violation of the requirements of RCW 36.70A.200(5). Consequently, this noncompliant Ordinance is not consistent with, nor does it implement, the City of Lake Forest Parks Comprehensive Plan - goals LU-7, CF-1, RO-1 and RO-2. RO-2, in particular, calls for "promoting the establishment of a safe, interconnected system of trails . . . recognizing the important recreational and transportation roles played by regional . . . bicycle and pedestrian trail systems." King County has carried its burden of proof and the Board finds and concludes that Ordinance No. 951 fails to comply with the consistency requirements of RCW 36.70A.130(1).

Conclusion

The City of Lake Forest Park's Ordinance No. 951 **fails to comply** with the consistency requirements of RCW 36.70A.130(1).

D. LEGAL ISSUES 7 AND 10 – SEPA and CTED

The PHO states Legal Issue Nos. 7 and 10 as follows:

Legal Issue No. 7 (Cascade Bike Issue B; King County Issue 6)

Does Ordinance 951, amending the City’s Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 43.21C (SEPA), because the City failed to comply with the procedural requirements of SEPA?

Legal Issue No. 10 (King County Issue 7)

Does Ordinance 951, amending the City’s Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use and adding new section LFPMC Chapter 18.54, violate RCW 36.70A.106 because the City failed to notify CTED at least 60 days prior to the final adoption of the Ordinance and the City failed to provide a copy of the final ordinance to CTED within 10 days of its final adoption?

Applicable Law

The State Environmental Policy Act – SEPA – requires that environmental review accompany “every recommendation or report on proposals for legislation. . .” RCW 43.21C.030(2)(c). WAC 197-11-310 states that “[A] threshold determination is required for any proposal which meets the definition of an action and is not categorically exempt.” The entire SEPA environmental review process is geared toward informed decisions about the environmental consequences of pending actions, including the adoption of ordinances.

RCW 36.70A.106(1) requires that jurisdictions submit notice of their intent to adopt any proposed Plans and development regulations, and amendments thereto, to the Department of Community, Trade and Economic Development (CTED) “at least sixty days prior to final adoption” to allow state agencies to comment on the proposals during the public participation process and prior to adoption.

Discussion

Both Petitioners assert that there is no evidence that any environmental review was conducted for Ordinance No. 951 prior to its adoption. Cascade PHB, at 31-32; King Co. PHB, at 20. King County asserts that similarly there is no evidence that Ordinance No. 951 was submitted to CTED for review prior to its adoption. County PHB, at 24.

In response, on both Legal Issues 7 and 10, the City does not dispute that it failed to conduct the required environmental review or submittal to CTED; instead, the City argues both issues are moot. The reasoning for the City’s mootness argument is that *after* passage of Ordinance No. 951, the City conducted environmental review and provided notice to CTED, then the “City passed Ordinance No. 958, which ‘approves, ratifies, confirms, readopts, and reenacts’

Ordinance No. 951.” City Response, at 47-48. Therefore, the City argues even if the Petitioners prevail on these issues, and Ordinance 951 is remanded, they have remedied the noncompliant action by adopting Ordinance No. 958. *Id.*

In reply, both Petitioners point out that the City has admitted noncompliance. Cascade PHB, at 22-23; County Reply, at 18. Both Petitioners argue that to accept the City’s action as moot reduces SEPA to a *post hoc* justification for action already undertaken and a paper exercise, not a basis for making informed decisions of environmental consequences. *Id.* The County further points out that the recent environmental review and submittal to CTED was on Ordinance No. 958, not the challenged Ordinance 951. The Board agrees with Petitioners. Both the SEPA environmental review requirements and the CTED submittal and review requirements are in place to inform decision-makers *before* taking action. It is undisputed that there was no evidence that the City complied with either SEPA or the CTED review provision of the GMA. The Board finds and concludes that the City of Lake Forest Park failed to comply with Chapter 43.21C RCW and RCW 36.70A.106, when it adopted Ordinance No. 951. *Id.*

Adoption of Ordinance No. 958 does not cure this violation, especially in light of the fact that Ordinance 951 has been found noncompliant with several other GMA provisions in this Order and will be remanded. Consequently, on remand, the City will have the opportunity to fully comply with these review requirements.

Conclusion

The Board finds and concludes that the City of Lake Forest Park **failed to comply** with Chapter 43.21C RCW and RCW 36.70A.106, when it adopted Ordinance No. 951.

VI. INVALIDITY

The Board has previously held that a request for an order of invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18. Petitioners here have requested the Board to find Ordinance 951 invalid. Cascade PFR, at 4; King County PFR, at 22.

Applicable Law

The GMA’s Invalidity Provision, RCW 36.70A.302, provides:

- (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
 - (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
 - (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

- (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
- (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

Discussion and Analysis

In the discussion of the Legal Issues in this case, the Board found and concluded that the City of Lake Forest Park's adoption of Ordinance No. 951 was **clearly erroneous**. The Ordinance was **non-compliant** with the requirements of RCW 36.70A.200(5), because it precludes the siting of an EPF, **non-compliant** with the consistency requirements of RCW 36.70A.130(1), and was adopted without complying with SEPA or providing the required 60-day notice to CTED. The Board further found and concluded that the City's action **was not guided by the goals** of the Act, specifically Goals 3, 7, 9, and 12.¹¹ The Board is **remanding** Ordinance No. 951 with direction to the City to take legislative action to comply with the goals and requirements of the GMA as set forth in this Order.

A Board may enter an order of invalidity upon a determination that the continued validity of a non-compliant city or county enactment substantially interferes with fulfillment of the goals of the GMA. RCW 36.70A.302(1)(b). As set forth in the findings and conclusions below, Lake Forest Park's adoption of Ordinance No. 951, which impedes the siting and improvement of an essential public facility, interferes with the fulfillment of the goals of the GMA, in particular RCW 36.70A.020(3), (7), (9), and (12).

- Regarding Goal 3 (Transportation), the Board has determined that the Ordinance "thwarts the goal of encouraging multi-modal transportation systems based on regional priorities."
- Regarding Goal 7 (Permits), the Board has determined that the Ordinance "results in an unfair and unpredictable permitting process contrary to RCW 36.70A.020(7)."
- Regarding Goal 9 (Open space and recreation), the Board has determined that Ordinance No. 951, by giving the City discretion to deny and/or prevent the necessary improvements to the Trail, "fails to provide for the development of a regional recreational facility and thus was not guided by GMA Goal 9."

¹¹ Petitioners argue non-compliance with the following goals:

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreational facilities.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

- Regarding Goal 12 (Public facilities and services), the Board has determined that Ordinance No. 951 “was not guided by GMA Goal 12,” because, in the face of projected growth, the Ordinance “gives the City the discretion to deny and/or prevent important improvements to the Trail.”

The Board therefore finds and concludes that Ordinance No. 951 thwarts the GMA mandate to (1) provide an efficient multi-modal transportation system and to coordinate planning with the region, (2) provide a permit process that is timely and fair, (3) retain open space and develop parks and recreation facilities, and (4) ensure that public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards. Thus, Ordinance 951 **substantially interferes** with the achievement of Goals 3, 7, 9 and 12.

Accordingly, the Board enters a **determination of invalidity** and **remands** Ordinance No. 951 to the City of Lake Forest Park to take legislative action consistent with the goals and requirements of the GMA as interpreted in this Final Decision and Order.

Findings of Fact

1. On November 9, 2006, the City of Lake Forest Park adopted Ordinance 951, amending its conditional use permit requirements for multi-purpose or multi-use trail.
2. The Board finds the Burke-Gilman Trail is an essential regional multi-purpose, or multi-use trail, and is an important element in a regional transportation system under RCW 36.70A.020(3). The Board further finds the Burke-Gilman Trail to be an important recreational facility under 36.70A.020(9).
3. The Board finds the conditional use permit process in Ordinance 951 substantially interferes with the siting of an essential regional public facility under RCW 36.70A.020(7).
4. The Board finds the conditional use permit process in Ordinance 951, using specific development criteria, interferes with the siting of an essential public facility under RCW 36.70A.200(5).
5. The Board finds that the City violated the procedures for notification to the State (CTED) for changes to the City’s Development Regulations under RCW 36.70A.106.
6. The Board finds that the City violated the State Environmental Policy Act (RCW 43.21C) by not following SEPA procedures prior to the passage of Ordinance 951.
7. The Board finds that with the enactment of Ordinance 951, the City thwarts the GMA mandate to encourage the siting of essential public facilities and to encourage an efficient and coordinated multi-modal transportation system, and provide a timely and fair manner to ensure predictability of permits.

Conclusion

The Board makes a finding of **noncompliance** and issues an order of **remand**. The Board further **enters an order of invalidity**.

VII. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The City of Lake Forest Park's adoption of Ordinance No. 951 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.200 (5) and **is not guided** by GMA goals RCW 36.70A.020 (3), (7), (9) and (12). Further, in adapting the Ordinance, the City failed to comply with RCW 36.70A.130(1), RCW 36.70A.106(1) and SEPA.
2. Therefore the Board **remands** Ordinance No. 951 to the City of Lake Forest Park with direction to the City to take legislative action to comply with the requirements of the GMA as set forth in this Order.
3. The Board further finds and concludes that the enactment of Ordinance No. 951 substantially interferes with the goals and requirements of the GMA. The Board therefore enters an **order of invalidity**.
4. The Board sets the following schedule for the City's compliance:
 - The Board establishes **January 24, 2008**, as the deadline for the City of Lake Forest Park to take appropriate legislative action.
 - By no later than **February 7, 2008**, the City of Lake Forest Park shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.
 - By no later than **February 21, 2008**,¹² the Petitioner may file with the Board an original and four copies of Response to the City's SATC.
 - By no later than **February 28, 2008**, the City may file with the Board a Reply to Petitioner's Response.
 - Each of the pleadings listed above shall be simultaneously served on the other party to this proceeding.
 - Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **March 6, 2008, at 10:00 a.m.** The hearing will be held at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Lake Forest Park takes the required

¹²February 21, 2008, is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

legislative action prior to the January 24, 2008, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 23rd day of July, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.¹³

¹³ Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

APPENDIX A

CHRONOLOGY OF PROCEDURES IN CPSGMHB CASE NO. 07-3-0010c

A. General

On January 3, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Cascade Bicycle Club (**Cascade Bicycle**). The matter was assigned CPSGMHB Case No. 07-3-0001. Cascade Bicycle challenges the City of Lake Forest Park's (**Respondent, Lake Forest Park, or the City**) adoption of Ordinance No. 951, citing noncompliance with various provisions of the Growth Management Act (**GMA or Act**) and the State Environmental Policy Act (**SEPA**).

On January 22, 2007, the Board received a PFR from King County (**King County or the County**). The matter was assigned Case No. 07-3-0010. King County also challenges Lake Forest Park's adoption of Ordinance 951 for noncompliance with the GMA and SEPA.

On January 26, 2007, the Board issued a "Notice of Hearing (**NOH**) and Intent to Consolidate (**ITC**). The ITC consolidated the Cascade Bicycle PFR and the King County PFR into one consolidated case – *Cascade Bicycle, et al., v. Lake Forest Park*, CPSGMHB Consolidated Case No. 07-3-0010c. No objections to the consolidation were received.

On February 1, 2007, the Board conducted the PHC at the Board's offices in Seattle. Presiding Officer Dave Earling conducted the conference. Jeffrey M. Eustis represented Cascade Bicycle and Andrew Marcuse represented King County. Rosemary Larson represented the City. The Board reviewed its procedures for the hearing, including the composition of the Index to the Record below; filing of core documents, exhibit lists, and supplemental exhibits; possible dispositive motions; the Legal Issues to be decided; consolidation of the matter, and a Final Schedule.

On February 5, 2007, the Board submitted proposed Consolidated Legal Issues to the parties for comments. All of the parties responded and the legal issues, as consolidated by the Board and modified and approved by the parties, were established and set forth in the Board's Prehearing Order issued on February 6, 2007.

Lake Forest Park filed its Index of the Record on February 8, 2007.

B. Motion to Supplement the Record and Amend the Index

On February 22, 2007, the Board received Cascade Bicycle's Motion to Supplement the Record (**Cascade Motion**), seeking the addition of ten documents.

On February 22, 2007, the Board received King County's Motion to Supplement the Record (**County Motion**), seeking the addition of five documents.

On March 9, 2007, the Board received the City's Response to Motions to Supplement the Record (**City Response**).

On March 15, 2007, the Board received Cascade Bicycle's Reply in Support of Motion to Supplement (**Cascade Reply**).

On March 19, 2007, the Board issued its "Order on Motions" **granting in part, and denying in part** Cascade Bicycle's Motion to Supplement the Record¹⁴ The Board also **granted** King County's Motion to Supplement the Record.

C. Dispositive Motions

On February 22, 2007, the Board received the City's Motion to Dismiss Legal Issue No. 2 (**City Motion**), alleging that the Board does not have subject matter jurisdiction over this issue.

On March 6, 2007, the Board received Cascade Bicycle's Response to Lake Forest Park's Motion to Dismiss Legal Issue No. 2 (**Cascade Response**).

On March 15, 2007, the Board received the City's Reply to Cascade's Response to the City's Motion to Dismiss (**City Reply**).

King County did not file a response to the City's Motion to Dismiss.

On March 19, 2007, the Board issued its "Order on Motions" **granting in part, and denying in part** the City's motion to **dismiss** Legal Issue No. 2 for lack of subject matter jurisdiction.¹⁵

D. Briefing and Hearing on the Merits

On April 25, 2007, the Board received Cascade Bicycle's "Hearing Memorandum" (**Cascade PHB**) with 16 tabbed exhibits.

On April 25, 2007, the Board received "King County's Prehearing Brief" (**King County PHB**) with 13 tabbed exhibits.

On May 9, 2007, the Board received "City's Response Brief" (**City Response**), with 62 tabbed exhibits. Along with the City's Response, the City filed a "Motion to Supplement the Record" with one exhibit.

On May 21, 2007, the Board received the "Reply Memorandum by Cascade Bicycle Club" (**Cascade Reply**), with one exhibit.

¹⁴ The motion was **granted** in regard to exhibits 1,3,4,5,7,8,9,10; and **denied** in regard to exhibit 6.

¹⁵ As the City's motion pertains to the deadline of September 1, 2002, as set forth in RCW 36.70A.200(2), the motion was **granted**. As the City's motion pertains to the deadline of July 1, 1994, as set forth in RCW 36.70A.040 and incorporated in RCW 36.70A.200(1), the motion was **denied**.

On May 21, 2007, the Board received “King County’s Reply Brief” (**King County Reply**), with eight tabbed exhibits.

On June 1, 2007, the Board held a hearing on the merits (**HOM**) at the Board’s office at 800 Fifth Avenue, Suite 2356, Seattle, Washington. Board members David Earling, Presiding Officer, Edward McGuire, and Margaret Pageler were present. The Board’s Law Clerk, Julie Taylor, was also present for the Board. Petitioner Cascade Bicycle was represented by Jeffrey Eustis. Petitioner King County was represented by Andrew Marcuse. Respondent City of Lake Forest Park was represented by Michael Ruark. Court reporting services were provided by Barbara Hayden of Byers and Anderson, Inc. The following persons also attended the HOM to observe: David Hiller, Chuck Ayers, David Hutchison, David Cline, Steve Bennett, Ed Sterner, Kevin Brown, Tom Koney, Amy Daubert, and Bill Moritz.

On June 7, 2007, in response to a request of the Board at the HOM, Cascade Bicycle filed a “Statement of Supplemental Authorities by Cascade Bicycle Club.”

The Board ordered a transcript of the hearing. The transcript was received on July 9, 2007.